IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER (STAMP) NO.28988 OF 2004
IN
L.C.SUIT NO.5189 OF 2004

Vinod Dayalal Gala)..Appellant

versus

Municipal Corporation of Greater Bombay)..Respondents

Mr.P.S.Dani for the Appellant.

Mr.J.Xavier for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 5TH NOVEMBER 2004

P.C. :

. This Appeal is being heard despite there being objections since the Advocate on Record for the Appellant undertakes to remove all the office objections before 22nd November 2004.

2. The order of the Assistant Municipal Commissioner dated 27th October 2004 does not disclose any application of mind. The Assistant Commissioner has merely listed the documents produced by the Appellant and has stated that they do not prove authorization or existence of the structure under reference prior to datum line i.e. 1961-62. A contention is raised in the Plaint that no hearing has been given to the Appellant.

The principles of natural justice must be followed while deciding the matter after issuing a notice under Section 351 of the Bombay Municipal Corporation Act. This does not appear to have been done in the present case. The order of the Assistant Commissioner does not disclose that the guidelines laid down in Sopan Maruti Thopte's case (AIR 1990 BOMBAY 304) have been followed while passing the impugned order.

3. The Appellant may make representation to the Assistant Municipal Commissioner, H-West Ward on or before 29th November 2004 together with any further documents that he wishes to rely on to show that the offending structure is authorised and has been in existence prior to the datum line. The Assistant Municipal Commissioner shall give notice to the landlord of the suit premises and hear him. The Assistant Municipal Commissioner shall decide the representation of the Appellant within four weeks thereafter by passing a reasoned order and communicate the same to the Appellant immediately. No action will be taken by the Corporation for a period of six weeks after the order is passed and communicated to the Appellant.

4. In the event the Appellant does not make a representation as aforestated within the stipulated time, the order of the trial Court will be revived.

5. In view of the above, Appeal From Order disposed of accordingly.

6. Since the Appeal From Order has been disposed of, nothing survives in Civil Application No.1325 of 2004 and the same is disposed of accordingly.